



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/533,589	09/25/95	PALLEY	I 30-3744

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EXAMINER

ELOSHWAY, N

ART UNIT

PAPER NUMBER

3727

DATE MAILED:

11/01/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/533,589

Applicant(s)

PALLEY ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 1999.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-117 is/are pending in the application.
- 4a) Of the above claim(s) 7,39-41,58-73 and 77-117 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-38,42-57 and 74-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 26.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: _____

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DETAILED ACTION

Election/Restriction

1. Claims 7, 39-41, 58-73 and 77-117 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention and/or species. Note, claims 39-41 do not read on species II, claims 39-41 appear to be drawn to a different species. Therefore, claims 39-41 are withdrawn from further consideration.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 12-32, 34-36, 43-57 and 74-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5,545,455 (Prevorsek et al.) in view of Lewis (U.S. 0,674,009). Prevorsek et al. disclose the claimed device except for the specific structure of the container, although, Prevorsek et al. do disclose that the patented invention can be used for containers and other conventional purposes. Lewis discloses that it is known in the art to construct a container from three separate telescoping bands of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Prevorsek et al. in the form of the container of Lewis, in order to make a blast resistant container which is easy to assemble. The outermost band of the Lewis container is considered to be "substantially seamless".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 33, 37, 38, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis (U.S. 0,674,009). The term "band" is defined in the Webster's II New Riverside University Dictionary as "a thin strip of flexible material for encircling and binding on object or for holding several objects together". In view of this definition elements A, B and C of Lewis are considered to be bands. Element C is the first band, element B is the second band and element A is the third band. Each wall of the completed container has a thickness "substantially equivalent" to the sum thickness of two of the bands. To the degree applicant's bands are considered "substantially polygonal" in cross section, the bands of Lewis are considered "substantially polygonal" in cross section. Both bands B and C comprise a plurality of substantially rectangular surfaces in series, which are nested within another band. The outermost band of the Lewis container is considered to be "substantially seamless".

Regarding claims 37, 38, 42, figure 1 shows closure A which covers the access opening formed by band C and flaps or doors B¹.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. (U.S. 4,290,468). Lewis discloses the claimed device except for rigid support frame. Rosenbloom, Jr. et al. disclose that it is known in the art to provide a rigid support frame within an inner sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with a rigid support frame as taught by Rosenbloom, Jr. et al., in order to increase the strength of and provide additional support for the container. Rosenbloom, Jr. et al. discloses that the rigid support frame can be made of metal.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. as applied to claim 9 above, and further in view of Hall (U.S. 4,216,803). The modified container of Lewis discloses the claimed device except for the support structure being wrapped with glass or carbon fibers. Hall discloses that it is known in the art to wrap a metallic band with glass fibers (see col. 2 ln. 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Lewis using glass fibers to wrap the metallic band as taught by Hall, in order to strengthen the metallic band without significantly increasing the overall weight of the rigid support structure.

10. Claims 12-32, 34-36, 43-57 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Prevorsek et al. (U.S. 5,545,455). Lewis discloses the claimed device except for the band material. Prevorsek et al. disclose that it is known in the art to make a container from layers comprising networks of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with the fibrous material of Prevorsek et al., in order to make a container with improved penetration resistance. The fibers of Prevorsek et al. are considered to be "substantially continuous" in length (see col. 8 ln.

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17-45 of Prevorsek et al.) and to the degree that applicants' species II bands are "substantially seamless" the bands of Lewis are considered to be "substantially seamless". Prevorsek et al. discloses that the fibers have a tenacity of at least 15 grams/denier and a tensile modulus of at least 300 grams/denier (see col. 7 ln. 14-22). In col. 7 ln. 62 - col. 8 ln. 16, Prevorsek et al. disclose that aramid fibers and glass fibers may be used to form the fibrous layers, and in col. 7 ln. 10-11 Prevorsek et al. disclose that polyolefin fibers may be used in the fibrous layer. The claimed matrix is disclosed in col. 8 ln. 17 - col. 9 ln. 38 of Prevorsek et al., in particular on line 3 of col. 9, a polyurethane matrix is disclosed.

The modified container of Lewis does not specifically disclose the specific percent of the fibers which are considered to "substantially continuous". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a certain percent of the fibers substantially continuous depending on the what strength and rigidity is desirable for the container and, since the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984). The modified container of Lewis is polygonal in cross section and would inherently deform if the blast is great enough. The container deformation is dependent on the strength of the blast. Regarding claims 74-76, the inner and intermediate band of the modified Lewis invention comprise the container and the outer band is the strip.

Response to Amendment

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11. Regarding the provisional Double Patenting rejection above, applicants' state in the response filed June 5, 1998 that a Terminal Disclaimer was filed with the response. However, a Terminal Disclaimer was not received in this application.

Response to Arguments

12. Applicant's arguments filed June 5, 1998 have been fully considered but they are not persuasive. In response to applicants prior art arguments that the outer band of Lewis is not seamless, the limitation that the outermost band is "substantially seamless" is satisfied by the Lewis container, to the degree set forth in the claims. The outermost band of Lewis is considered "substantially seamless".

Applicant also argues that Lewis does not teach a third band which is blast resistant. It is submitted that the third band of Lewis is capable of withstanding blasts having a certain magnitude. Therefore, to the degree set forth in the claims, the Lewis container is considered "blast resistant". Regarding the limitation of claim 33, requiring that the bands are formed of a composite material, the Lewis container is formed of cellular board which can be considered a composite material.

Conclusion


13. This is a Continued Prosecution Application of applicant's earlier application, also having and Application No. of 08/533,589. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.


Niki M. Eloshway/nme
Patent Examiner
10/28/99


Allan N. Shoap
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